IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Madan Lal & Ors. Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1084/2005

DATE OF ORDER :: December 05, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

None peresent for the petitioners.
Mr.Ashok Upadhyaya, P.P.
Mr.Amitabh Acharya, for the complainant.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 7.7.2005 passed by the Additional Sessions Judge No.2, Bikaner (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioners against the order dt. 19.11.2003 passed by the Judicial Magistrate, Dungargarh, Distt. Bikaner (for short 'the trial court' hereinafter), was dismissed.

I have heard learned Public Prosecutor and the counsel

appearing for the complainant. Carefully gone through the memo of petition as also the orders passed by the trial court as well as by the revisional court.

Both the courts below concurrently found that prima facie there is ground to proceed against the present petitioners for the offences under sections 447, 323, 427 and 379 I.P.C. It appears that on report lodged by the complainant, the police investigated the matter and filed the FR. However, on protest petition filed by the complainant-non-petitioner No.2, the trial court recorded the statements of the complainant under section 200 Cr.P.C. and the witnesses produced by him under section 202 Cr.P.C. On the material available before the trial court, the trial court prima facie came to the conclusion that there is a ground to proceed against the present petitioners for the offences noticed above. The witnesses stated that the petitioner committed trespass, caused the mischief with the property and stole the crops from the land in possession of the complainant. The order of the trial court taking cognizance dt. 19.11.2003 was challenged by the petitioner before the revisional court. The revisional court on consideration of the material on record, came to the conclusion that the trial court was justified in taking cognizance. It is settled law that at the stage of taking cognizance, the court has to be satisfied whether prima facie

there is a ground to proceed against the person sought to be arraigned as an accused and not whether there is sufficient ground for conviction.

In Jagdish Ram Vs. State of Rajasthan, **AIR 2004 SC 1734,** the Hon'ble Surpreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Keeping in view the decision of the Hon'ble Supreme Court in Jagdish Ram vs. State of Rajasthan (supra) and the evidence

available on record, in my view, no case for interference in the inherent jurisdiction is made out. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court. The scope of interference under section 482 Cr.P.C. is very limited. It is settled law that the powers under section 482 Cr.P.C. are to be exercised very sparingly and cautiously and in exceptional cases. The case in hand is not of that nature and, therefore, orders impugned call for no interference.

Consequently, the petition is dismissed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-